

Arnold Richer - 2751
Patrick F. Holden - 6247
RICHER & OVERHOLT, P.C.
901 West Baxter Drive
South Jordan, UT 84095
Telephone: (801) 561-4750 Ext.# 15
Facsimile: (801) 561-4744
Email: aricher@richerandoverholt.com

Attorneys for Plaintiff World Botanical Gardens, Inc.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re: WALTER L. WAGNER, Debtor.	Bankruptcy Case No. 12-35494 Chapter 7 Honorable Joel T. Marker
WORLD BOTANICAL GARDENS, INC., Plaintiff, v. WALTER L. WAGNER, Defendant.	PLAINTIFF'S RESPONSE TO SUPPLEMENTAL AFFIDAVIT OF WALTER L. WAGNER IN SUPPORT OF STAY OF PROCEEDINGS Adversary Proceeding No. 13-02099 (Filed via ECF)

Plaintiff World Botanical Gardens, Inc. ("Plaintiff"), by and through its counsel, Richer & Overholt, P.C., hereby submits Plaintiff's Response to Supplemental Affidavit of Walter L. Wagner in Support of Stay of Proceedings.

1. Defendant Walter L. Wagner ("Defendant") has submitted a Supplemental Affidavit of Walter L. Wagner in Support of Stay of Proceedings ("Affidavit") [Dkt. No. 25] in which he

requests that this Court stay the instant adversary action against him based on the Chapter 11 Bankruptcy filing of World Botanical Gardens, Inc. ("WBGI") in the United States Bankruptcy Court for the District of Nevada (Case No. 13-50833).

2. Defendant's assertions do not comport with the information supplied in WBGI's Status Report dated June 26, 2013, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

3. Plaintiff has obtained an Order of the Nevada Bankruptcy Court approving the continued employment of the law firm of Richer & Overholt to preserve and pursue claims held by WBGI in the Chapter 7 bankruptcy case of Walter L. Wagner, a true and correct copy of which was filed in this adversary action on June 25, 2013. [Dkt. No. 23]

4. WBGI has obtained new experienced bankruptcy counsel as specifically set forth in attached Exhibit "A", and Plaintiff believes that the Chapter 11 case will proceed as planned in that bankruptcy estate.

5. Plaintiff believes that it is entitled and authorized to take the appropriate actions to preserve and pursue claims held by WBGI against the Defendant in the United States Bankruptcy Court for the District of Utah.

WHEREFORE, Plaintiff requests that Defendant's Motion to Stay be denied.

DATED this 17th day of July, 2013.

RICHER & OVERHOLT, P.C.

/s/ Arnold Richer
Arnold Richer
Attorneys for Plaintiff

Exhibit “A”

1 KEVIN A. DARBY, NVSB#7670
2 TRICIA M. DARBY, NVSB#7956
3 DARBY LAW PRACTICE, LTD.
4 4777 Caughlin Parkway
5 Reno, Nevada 89519
6 Telephone: (775) 322-1237
7 Facsimile: (775) 996-7290
8 E-mail: kevin@darbylawpractice.com

9
10 [Proposed] Attorney for Debtors and
11 Debtors in Possession

12 **UNITED STATES BANKRUPTCY COURT**

13 **DISTRICT OF NEVADA**

14 In re: CASE NO.: BK-N-13-50833-BTB
15 WORLD BOTANICAL GARDENS, INC., Chapter 11

16 **DEBTORS' STATUS REPORT**

17 Debtor.

18 Hearing Date: June 27, 2013
19 Hearing Time: 2:00 p.m.

20 Debtor and Debtor in Possession, WORLD BOTANICAL GARDENS, INC., hereby
21 provide this status report regarding the Debtors' efforts towards reorganization.

22 **I. Significant Events During This Case**

23 This case was filed on April 30, 2013, under Chapter 11 of the Bankruptcy Code (the
24 "Petition Date"). Since the filing of this case the Debtor has accomplished the following:

25 1) After filing incomplete schedules and statements on the Petition Date, Debtor filed
26 completed schedules and statements on May 2, 2013. *See Dkt. No. 9 – Dkt. No. 16.*

27 2) Debtor obtained Court permission to pay prepetition wages and continue its payroll
28 management process and services. *See Dkt. No. 38.*

29 3) Debtor obtained Court approval for the continued use of Debtor's cash management
30 system, including the continued use of certain prepetition bank accounts. *See Dkt. No. 39.*

1 4) Debtor obtained Court approval to continue to employ the law firm of Richer &
2 Overholt to preserve and pursue claims held by Debtor in the Chapter 7 bankruptcy case of Walter
3 L. Wagner, pending in the United States Bankruptcy Court for the District of Utah. *See Dkt. No.*
4 *52.*

5 5) Debtor has retained experienced Chapter 11 bankruptcy counsel, Darby Law
6 Practice, LTD, to represent the Debtor in this case. *See Dkt. Nos. 53-54.*

7 6) On June 17, 2013, Debtor attended its continued 11 U.S.C. §341 meeting of creditors
8 through management and represented by Darby Law Practice, LTD, at which the §341 meeting
9 was formally concluded. *See Dkt. No. 51.*

10 **II. General Game Plan Going Forward**

11 Debtor is preparing an amended and restated motion to sell substantially all of Debtor's
12 assets pursuant to 11 U.S.C. §363. Debtor projects that the §363 motion to sell will be filed
13 within 14 to 21 days after the status conference set for June 27, 2013. Debtor anticipate seeking
14 an order to have the motion to sell heard by the Court on shortened time, as time is of the essence
15 in completing the proposed sale to the interested buyer(s). Upon completion of the contemplated
16 sale of Debtor's assets, Debtor will reassess its status and determine how to proceed in this case
17 going forward.

18 DATED this 26th day of June, 2013.

19 DARBY LAW PRACTICE, LTD.

20 By: /s/ Kevin A. Darby

21 KEVIN A. DARBY, ESQ.

22 [Proposed] Reorganization Counsel
23 for Debtors and Debtors in Possession

24

25

26

27

28